APPENDIX A

FLORIDA INDUSTRIAL COMMISSION
WORKMEN'S COMPENSATION DIVISION
TALLAHASSEE, FLORIDA

CLAIM No. 266 78 2382
DATE OF ACCIDENT: October 23, 1968
EMPLOYEE: Antonio Perez
2706 State Street
Tampa, Florida

Represented By:

John A. Chilldon, Esq.
906 First Federal Building
Tampa, Florida

EMPLOYER: Seacoast Transportation Company
c/o Seaboard Coastline Railroad Company
39th Street and Adamo Drive
Tampa, Florida

CARRIER:

Represented By:

Richard A. Reeves, Esq.
Post Office Box 2111
Tampa, Florida

Compensation Order of Judge of Industrial Claims

Joseph M. Melendi

This cause came on for hearing at the request of the employee herein, and at the mutual request of the parties all other issues are to be held in obeyance until a determination of whether or not the Florida Industrial Commission has jurisdiction of the parties and the subject matter herein.

The employee, Antonio Perez, was a truck driver performing services for the Seacoast Transportation Com-

pany, when on October 23, 1968, he sustained an accident and injury while operating a tractor. The Seacoast Transportation Company is a wholly owned corporate entity of Seaboard Coastline Railroad Company, whose primary purpose was to collect lots of merchandise and to pick up and deliver trailers generally to ramps as they relate to the piggy-back operation of Seaboard Coastline Railroad Company. In *form*, all employees performing services for Seacoast Transportation Company are characterized by Seaboard Coastline Railroad Company in the service of Seacoast Transportation Company.

It is contended by Seaboard Coastline Railroad Company and Seacoast Transportation Company, hereinafter collectively referred to as the "Employers," that the Florida Industrial Commission lacks jurisdiction of the parties and the subject matter herein in that the employee was an employee of Seaboard Coastline Railroad Company and his exclusive remedy is within the Federal Employee's Liability Act.

In response, the employee, by and through his attorney, contended that the employee was an employee of Seacoast Transportation Company, an employer within the jurisdiction of F. S. § 440. Alternatively, the employee contended that if the employee is held to be an employee of Seaboard Coastline Railroad Company, the Seacoast Transportation Company was the employee's "special" employer. Further, it is alleged and contended by the employee that Seacoast Transportation Company is estopped to claim that it is a railroad for pursuant to its own charter, it would be ultra vires to act as such.

At the hearing, the parties stipulated to the following:

1. That on October 23, 1969, the employee met with an accident arising out of and in the course of his employment, and thereby sustained some injury;

2. That Seacoast Transportation Company is not an

express company, but is a corporate entity, existing under the laws of the State of Florida;

3. That venue lies in Hillsborough County, assuming the Florida Industrial Commission has jurisdiction of the subject matter and the parties herein;

4. That no Florida Workmen's Compensation benefits have been provided the employee;

5. That the corporate charter of Seacoast Transportation Company is to be admitted into evidence;

6. That the payroll record of the employee is to be admitted into evidence simply to show what the employee earned while performing his assigned duties.

Based upon all of the evidence, the undersigned hereby makes the following findings of fact and conclusions of law:

1. That all facts are as stipulated;

2. That after carefully considering the record, the conclusion seems inescapable that the facts in this case indicate that the employer was *in substance,* as opposed to *form,* either an employee of Seacoast Transportation Company, which in either event would cause him to be subject to the provisions of F.S. § 440 and the Florida Industrial Commission, for the corporate separation between a railroad and a wholly owned subsidiary cannot be ignored under the circumstances in this cause;

3. That the Seacoast Transportation Company is an employer not exempted from the application of F.E. § 440 and the jurisdiction of the Florida Industrial Commission;

4. That the Employers herein have failed in their burden to prove that the employee's exclusive remedy is within the provisions of the Federal Employee's Liability Act and consequently, it is the undersigned's conclusion that the Florida Industrial Commission has jurisdiction of the subject matter herein, the Seacoast Transportation

Company and the employee, Antonio Perez. See *Stuyvesant Corp.* v. *Waterhouse,* Fla. Sup. Ct. 1954, 74 So. 2d 554; *Roberts' Fish Farm* v. *John Joseph Spencer,* Fla. Sup. Ct. 1963, 153 So. 2d 718; *Naranja Rock Co., Inc.* v. *Dawal Farms, Inc.,* Fla. Sup. Ct. 1954, 74 So. 2d 282.

WHEREFORE, IT IS ORDERED that jurisdiction of this cause be and is hereby retained for the determination of the Florida Workmen's Compensation benefits due the employee/claimant herein, if any, and for the assessment of a reasonable attorney's fee payable to his counsel, assuming same is due.

DONE AND ORDERED in Tampa, Hillsborough County, Florida, this 26th day of March, 1969.

/s/ JOSEPH E. MELENDI
Joseph E. Melendi
Judge of Industrial Claims

(Certificate of Service Omitted in Printing)

APPENDIX B

FLORIDA INDUSTRIAL COMMISSION
WORKMEN'S COMPENSATION DIVISION
TALLAHASSEE, FLORIDA

CLAIM NO.: 266-78-2382
DATE OF ACCIDENT: October 23, 1968
EMPLOYEE: ANTONIO PEREZ
2706 State Street
Tampa, Florida

Represented by:

Law Offices of John A. Chilldon
Suite 906, First Federal Building
220 Madison Street
Tampa, Florida 33602

EMPLOYER: SEACOAST TRANSPORTATION COMPANY
c/o Seaboard Coastline Railroad Company
39th Street and Adamo Drive
Tampa, Florida
CARRIER: NO RECORD OF COVERAGE

Represented by:

Messrs. Fowler, White, Gillen,
Humkey, and Kinney
Post Office Box 1438
Tampa, Florida 33601
and
Messrs. Allen, Dell, Frank,
and Trinkle
Post Office Box 2111
Tampa, Florida 33601

Compensation Order of Industrial Relations Commission

This cause came on to be heard upon application of the employer for review of an Order of the judge of industrial claims dated March 26, 1969, wherein he determined that

the employee was not exempt from the provisions of the Workmen's Compensation Law and, accordingly, assumed jurisdiction of the cause.

The employee worked as a truck operator in the Tampa area. He was injured while either employed by the Seacoast Transportation Company or the Seaboard Coastline Railroad Company. It appears that the employee was paid by checks of the railroad and that deductions were made from his salary for the Railroad Retirement Fund, rather than social security. It further appears that the Seacoast Transportation Company, a Florida corporation, does not have any employees on its payroll. Subsequent to the hearing, the judge found that the claimant was either an employee of Seacoast Transportation Company or, in the alternative, an employee of Seaboard Coastline Railroad Company loaned to Seacoast Transportation Company. We cannot agree with this finding. In the first place, the judge should not have made a finding in the alternative, and, further, the evidence does not support his conclusion that the claimant was an employee of Seacoast. It appears that Seacoast had no employees and is not an *operating* company.

The theory that the claimant was an employee on the "loaned employment" doctrine is not supported by the record. In order to come under the aforesaid doctrine, the following rule applies as set out in Larson's *Workmen's Compensation Law,* Volume 1-A, Section 48:

> "§ 48.00 When a general employer lends an employee to a special employer, the special employer becomes liable for workmen's compensation only if
>
> "(a) the employee has made a contract of hire, express or implied, with the special employer;
>
> "(b) the work being done is essentially that of the special employer; and
>
> "(c) the special employer has the right to control the details of the work.

> "When all three of the above conditions are satisfied in relation to both employers, both employers are liable for workmen's compensation."

The record is devoid of any of the above requirements. The claimant was not mislead as to whose employee he was, and he knew that his pay came from the railroad and that deductions were being made under the Railroad Retirement Act from his check.

The judge's reliance on the case of *Stuyvesant Corp.* v. *Waterhouse*, 74 So. 2d 554 (Fla. 1954), is not well taken. In said case all of the necessary prerequisites for the "loaned employee" were present as pointed out in the above quoted section from Larson's. In the *Waterhouse* case, supra, the Supreme Court quoted from the Wisconsin case of *Rhinelander Paper Co.* v. *Industrial Commission*, 239 N.W. 412, 413, which reads, in part, as follows:

> "'. . . Where an employee enters the service of another at the command and pursuant to the direction of the master, no new relationship is created. While the employee may be subject to the direction of the temporary master, he is there in obedience to the command of his employer, and in doing what the new master directs him to do, he is performing his duty to the employer who gave the order. . . .'"

Accordingly, for the reasons stated above, the Order of the judge of industrial claims must be reversed and the cause dismissed.

Having considered the cause upon the record, briefs and oral argument of counsel for the parties, and it appearing that the Order of the judge of industrial claims is not in accord with the essential requirements of law as hereinabove pointed out, it is

ORDERED that said Order of the judge of industrial claims dated March 26, 1969, be and the same is hereby reversed and the cause be and the same is hereby dismissed.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this December 30, 1970, A.D., 1970.

INDUSTRIAL RELATIONS COMMISSION

/s/ J. W. PEEBLES, *Chairman*
J. W. Peebles

/s/ WALTER L. LIGHTSEY, *Member*
Walter L. Lightsey

/s/ FRANK M. NELSON, JR., *Member*
Frank M. Nelson, Jr.

(Certificate Omitted in Printing)

APPENDIX C

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D., 1971
CASE NO. 40,683

ANTONIO PEREZ, *Petitioner,*

v.

SEACOAST TRANSPORTATION COMPANY and INDUSTRIAL RELATIONS COMMISSION, *Respondents.*

Opinion filed May 26, 1971.

Writ of Certiorari to the Industrial Relations Commission.

John A. Chilldon, for Petitioner.

James E. Thompson of Fowler, White, Gillen, Humkey, Kinney & Boggs, Patrick H. Mears and J. Franklin Garner, for Respondents.

First Opinion of Florida Supreme Court

PER CURIAM.

By petition for writ of certiorari claimant seeks review of an order of the Industrial Relations Commission reversing an order of the Judge of Industrial Claims. The order of the Claims Judge held that the Industrial Relations Commission had jurisdiction of the subject matter of, and parties to, the instant case.

We conclude that the findings of fact contained in the order of the Judge of Industrial Claims on the issue of the independent corporate existence of Seacoast Transportation Company apart from that of Seaboard Coastline Railroad are wholly inadequate to permit intelligent review.

Accordingly, the petition for writ of certiorari is granted without oral argument, the order of the Full Commission is vacated, and the Full Commission is here-

by directed to remand the cause to the Judge of Industrial Claims for further findings of fact, and for entry of an order in compliance with the requirements of the act and decisions thereunder. See *Hardy* v. *City of Tarpon Springs*, 81 So. 2d 503 (Fla. 1955); and *Ball* v. *Mann*, 75 So. 2d 758 (Fla. 1954). The Judge of Industrial Claims may require additional testimony of the parties if he deems such necessary.

An attorney's fee of $350.00 is awarded to claimant's attorney.

It is so ordered.

ROBERTS, C. J., ERVIN, CARLTON and MCCAIN, J. J., concur. DEKLE, J., dissents.

(Caption Omitted in Printing)

The petition for rehearing and motion for leave to amend petition for rehearing filed by respondent Seacoast Transportation Company are hereby denied and it is, further,

ORDERED that claimant's petition for rehearing and motion to strike motion for leave to amend petition for rehearing are hereby denied.

APPENDIX D

STATE OF FLORIDA DEPARTMENT OF COMMERCE
DIVISION OF LABOR AND EMPLOYMENT OPPORTUNITIES
BUREAU OF WORKMEN'S COMPENSATION

CLAIM NO.: 266 78 2382
DATE OF ACCIDENT: October 23, 1968
EMPLOYEE: ANTONIO PEREZ
2706 State Street
Tampa, Florida

Represented by:

WILLIAM M. HOLT, ESQ.
906 First Federal Building
220 Madison Street

Tampa, Florida 33602

EMPLOYER: SEACOAST TRANSPORTATION CO.
c/o Seaboard Coastline Railroad Company
39th Street and Adamo Drive
Tampa, Florida

CARRIER: None

Represented by:

JAMES E. THOMPSON, ESQ.
Fowler, White, Gillen, Humkey,
Kinney & Boggs, P.A.
Post Office Box 1438
Tampa, Florida

Compensation Order of Judge of Industrial Claims
Daniel E. Gallagher

THIS CAUSE came on for hearings upon remand by The Supreme Court of Florida for further findings of fact on the issue of the independent corporate existence of Seacoast Transportation Company apart from that of Seaboard Coastline Railroad.

In addition, Claimant filed Employee's Request for Admissions, Petition for Discovery, Petition for Order to Produce, Petition for Citation of Contempt, Interrogatories, Interrogatories to Prime F. Osborne, and Notice of Taking Deposition (of J. H. Stanley).

Seacoast Transportation Company filed Reply to Request for Admissions (consisting of objections to said Request), Objection to Interrogatories, Answers to Interrogatories (directed to Interrogatories), and Answers to Interrogatories (directed to Interrogatories to Prime F. Osborne).

The two sets of Interrogatories and Answers thereto were admitted into evidence, as was the deposition of James Creasy, Jr., and a contract dated January 1, 1968, between Seacoast Transportation Company and Seaboard Coastline Railroad Company—all pursuant to stipulation of the attorneys for the respective parties, and all subject to certain objections set forth in the record herein.

The said Employee's Request for Admission, Petition for Discovery, Objection to Interrogatories, Reply to Request for Admissions, and a portion of the said Petition for Order to Produce were withdrawn. The remainder of said Petition for Order to Produce was denied, and Seacoast's oral motion to quash the deposition of J. H. Stanley was granted.

Based upon all the evidence herein, the undersigned Judge of Industrial Claims finds as follows:

1. That upon the issue remanded, as a matter of fact, Seacoast Transportation Company is an operating company that has an independent corporate existence apart from Seaboard Coastline Railroad Company. In connection therewith, I further find the following facts:

(a) That Seacoast is a trucking company, while Seaboard is a railroad company;

(b) That Seacoast has entered into written contracts with Seaboard by which Seacoast agreed to perform trucking services for Seaboard as an independent contractor, utilizing its own employees and equipment, and protecting Seaboard from losses from injuries to Seacoast's employees and from wrong doing by Seacoast's employees;

(c) That such contracts are similar to contracts entered into by Seaboard with other unquestionably independent trucking companies, which perform many of the same services for Seaboard;

(d) That although most of Seacoast's business has been with Seaboard, it has, prior to the injury to the Claimant, contracted with another railroad, Taxares and Gulf Railroad Co., to perform similar services to those performed for Seaboard, and in said contract Seacoast agreed to comply with Workmen's Compensation Laws in effect at that time;

(e) That although Seacoast's employees are paid by checks drawn on Seaboard's account, these employees can be said to have been actually paid by Seacoast, in that it shows on Seacoast's books, expenses of more than $1¼ million a year for driver's wages;

(f) That although Seacoast turns over all monies collected to Seaboard, so do unquestionably independent trucking companies that perform similar services for Seaboard. Seaboard pays Seacoast and such other trucking companies monthly, and Seacoast shows annual income amounting to millions of dollars for the years relevant to this case;

(g) That Seacoast owns, outright, many trailers, which are leased to Seaboard and some of which are in turn leased back to Seacoast;

(h) That Seacoast, as well as Seaboard, is a named insured on certain insurance policies;

(i) That Seacoast has a corporate charter, corporate officers and corporate directors. These directors meet at least once a year, and have declared cash dividends to Seacoast's stockholders;

(j) That although Seaboard owns all of Seacoast's stock, Seaboard also owns all the stock of a land development company, and all of Seaboard's stock is, in turn, owned by still another corporation, Seaboard Coastline Industries, a holding company;

2. That, as was decided by the Supreme Court of Florida in *Robert's Fish Farm* v. *Spencer*, 153 S.2d 718, this Tribunal does not have jurisdiction to disregard the fact that Seacoast is a corporate entity apart from Seaboard. Unless, the facts evidence a compelling need to pierce the corporate veil herein, however, there is no equitable reason for doing so, no fraud nor subterfuge having been evidenced. Seacoast is not just a dummy corporation —on the contrary, from the contract between them, among other things, it is clear that they held themselves out to be separate entities and that their transactions are being conducted at arms length;

3. That I agree with and hereby ratify, affirm and find all findings and conclusions set out in COMPENSATION ORDER by Judge Melendi dated March 26, 1969, except the alternative findings, set out on page 4 thereof, that Claimant was either an employee of Seacoast or of Seaboard loaned to Seacoast. I find that Claimant was employed by Seacoast Transportation Company. His work was driving trucks, which was the business of Seacoast, rather than Seaboard. Although his employment application was on a Seaboard form, his operating manual was Seacoast's, and he was hired, supervised in his work, and ultimately terminated by the District Supervisor of Seacoast. Although his paychecks, like those of all Seacoast employees, were drawn on a Seaboard bank account, it is apparent that ultimately Seacoast actually paid him, because drivers'

wages are shown as a collective expense item amounting to millions of dollars on Seacoast's books. Finally, Seacoast's contract with Seaboard clearly recognizes that the trucking employees are employees of Seacoast, rather than of Seaboard;

4. That there is no pre-emption herein under the Federal Employers' Liability Act because Claimant's employer, Seacoast Transportation Company, was a trucking company, and was not a common carrier by railroad. Further the employer has failed to introduce any evidence to prove that Claimant was engaged in interstate commerce at the time of the accident, a second requirement for F.E.L.A. coverage, because there is no evidence to show that the freight Claimant was picking up at the time of the accident was destined for interstate transportation;

5. That the Department of Commerce, Bureau of Workmen's Compensation has jurisdiction of the parties and of the subject matter herein;

6. That Seacoast Transportation Company owes Claimant's attorney the $350.00 attorney's fee awarded by the Supreme Court herein, which fee is not contingent upon the award of benefits to Claimant. I will reserve ruling at this time upon Petition for Citation of Contempt until authority to proceed is clarified either by the Supreme Court or by legal precedent;

7. That Claimant's attorney has provided valuable services to Claimant herein, but I will reserve ruling on attorney's fees, including the $500.00 fee contingently awarded by the Industrial Relations Commission herein, until hearing is held on the benefits due to Claimant.

WHEREFORE, IT IS ORDERED as follows:

1. That Seacoast Transportation Company pay to Claimant's attorney the sum of $350.00 for attorney's fee awarded by the Supreme Court herein;

2. That jurisdiction of this cause be and it is hereby retained for the determination of benefits due to Claimant, if any, and the assessment of a reasonable fee for Claimant's attorney, if any benefits are awarded to Claimant.

DONE AND ORDERED in Tampa, Hillsborough County, Florida, this 26th day of March, 1973.

/s/ DANIEL E. GALLAGHER

Judge of Industrial Claims

(Certificate omitted in printing)

APPENDIX E

State of Florida

INDUSTRIAL RELATIONS COMMISSION

Cl. No. 266-78-2382

D/A. 10/23/68

SEACOAST TRANSPORTATION COMPANY, *Appellant*

v.

ANTONIO PEREZ, *Appellee*

Fowler, White, Gillen, Humkey, Kinney & Boggs, Tampa, for Appellant

William M. Holt, Tampa, for Appellee

Order

CARSON, *Chairman.*

This cause comes before the Industrial Relations Commission upon the employer's application for review of the Judge of Industrial Claims' Order of March 26, 1973, wherein the Judge found that Seacoast Transportation Co. had an independent corporate existence, and that the Judge had jurisdiction to determine workmen's compensation benefits due to the claimant as a result of industrial injuries sustained while in the employ of Seacoast.

The Appellant presents one question for our consideration:

> Whether an employee of a common carrier by railroad performing duties as a truck driver in the service of a trucking company which is a wholly owned subsidiary of the railroad formed to afford substituted service along parallel routes is covered for accidental injuries on the job by the Florida Workmen's Compensation Statute.

Having considered the cause upon the record, briefs and oral arguments of counsel for the parties, and it appearing that the findings of fact by the Judge of Industrial Claims are supported by competent and substantial evidence which accords with logic and reason, and that said Order accords with the essential requirements of law within the meaning of *U. S. Casualty Co. v. Maryland Casualty Co.*, 55 So.2d 741 (Fla. 1951), and *Meadows* v. *Curly's Trash Service, Inc.*, 244 So.2d 417 (Fla. 1971), it is ordered that said Order of the Judge of Industrial Claims dated March 26, 1973, be affirmed.

The Commission also notes that the Appellant has failed to timely file with the Commission a transcript of proceedings pursuant to the extension of time for filing said transcript granted by the Judge of Industrial Claims in his Order of June 20, 1973. The application for review, filed by the employer, is therefore dismissed. *Henderson's Portion Pak* v. *Fannie E. Jones,* 281 So.2d 342 (Fla. 1973); *F. S. 440.25(4)(b); Rule 23(a) and Rule 30(a), W. C. Rules of Procedure.*

Appellee's motion to strike Appendix I of Appellant's brief is granted. *Cochran* v. *Buddy Braun Chevrolet-Cadillac,* I.R.C. Order 2-2010 (May 19, 1972).

It is further ordered that the employer, Seacoast Transportation Company, pay to the claimant's attorney the sum of Five Hundred Dollars ($500.00) for services on behalf of the claimant on this review before the Industrial Relations Commission.

It is so ordered.

INDUSTRIAL RELATIONS COMMISSION
LEONARD A. CARSON, *Chairman*
BURNIS T. COLEMAN, *Commissioner*

SEAL

(Certificate omitted)

APPENDIX F

SUPREME COURT OF FLORIDA

Jan. 14, 1975

No. 45651

SEACOAST TRANSPORTATION COMPANY, *Petitioner,*

v.

ANTONIO PEREZ and INDUSTRIAL COMMISSION, *Respondents*

Certiorari denied.

ADKINS, C. J., and ROBERTS, McCAIN and OVERTON, JJ., concur.

(Caption omitted in printing)

On consideration of the Petition for Rehearing filed by attorneys for petitioner,

IT IS ORDERED that said petition is denied.

ADKINS, C.J., ROBERTS, McCAIN, OVERTON and ENGLAND, JJ., concur.

APPENDIX G

United States Code, Title 45:

§ 51. Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence; definition of employees

Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter.

Florida Statutes, Chapter 440:

§ 440.09 Coverage (Before October 1, 1974)

(1) Compensation shall be payable under this chapter in respect of disability or death of an employee if the dis-

ability or death results from an injury arising out of and in the course of employment. Death resulting from an operation by a surgeon furnished by the employer for the cure of hernia as required in subsection (6) of § 440.15 shall for the purpose of this chapter be considered as a death resulting from the accident causing the hernia. Where an accident happens while the employee is employed elsewhere than in this state, which would entitle him or his dependents to compensation if it had happened in this state, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this state, and if the employer's place of business is in this state or if the residence of the employee is in this state, provided, his contract of employment was not expressly for service exclusively outside of the state; provided, however, that if an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided herein.

(2) No compensation shall be payable in respect of the disability or death of any employee of a common carrier by railroad or express company engaged in intrastate, interstate or foreign commerce.

(3) No compensation shall be payable if the injury was occasioned primarily by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another. Where injury is caused by the willful refusal of the employee to use a safety appliance or observe a safety rule required by statute or lawfully required or approved by the commission, and brought prior to the accident to his knowledge, the compensation as provided in this chapter shall be reduced twenty-five per cent.

(4) When any employee of the state or of any political subdivision thereof or of any public or quasi-public cor-

poration therein, or any person entitled thereto on account of dependency upon such employee, receives compensation under the provisions of this chapter by reason of the disability or death of such employee resulting from an injury arising out of and in the course of employment with such employer, and such employee or dependent is entitled to receive any sum from any pension or other benefit fund to which the same employer may contribute, the amount of any payment from such pension or benefit fund allocable to any week with respect to which such employee or dependent receives compensation under this chapter shall be reduced by the amount of the compensation for such week; provided that if the amount of the payment from such pension or benefit fund allocable to any week is less than the amount of such compensation for such week only the amount of the pension or benefit payment allocable to such week shall be affected and the amount of the difference between the compensation and the pension of benefit payment allocable to one week shall not reduce the pension or benefit payment allocable to any subsequent week.

§ 440.09 Coverage (After October 1, 1974)

(1) Compensation shall be payable under this chapter in respect of disability or death of an employee if the disability or death results from an injury arising or death of an employee if the disability or death results from an injury arising out of and in the course of employment. Death resulting from an operation by a surgeon furnished by the employer for the cure of hernia as required in § 440.15 (6) shall for the purpose of this chapter be considered as a death resulting from the accident causing the hernia. Where an accident happens while the employee is employed elsewhere than in this state, which would entitle him or his dependents to compensation if it had happened in this state, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this state, or the employment was principally local-

ized in this state; provided, however, that if an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided herein.

(2) No compensation shall be payable in respect of the disability or death of any employee covered by the Federal Employer's Liability Act, the Longshoremen's and Harbor Worker's Compensation Act, or the Jones Act.